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ABSTRACT

When confronted with a student with acquired immune deficiency syndrome (AIDS), administrators must act very cautiously. In addition to the public relations and political problems asociated with students with AIDS, administrators are faced with the legal implications of their decisions; their actions, if uninformed, can result in monetary liability for their school systems or even for themselves. Addressing the law as it pertains to AIDS in the public schools, this legal memorandum outlines three legal theories that have been used to argue for the admission of students with AIDS. First, the Rehabilitation Act of 1973, Section 504 is explained, and four specific AIDS or AIDS-related cases are discussed. Second, the language of the Education for All Handicapped Children Act of 1975 (P.L. 94-142) is defined, followed by a discussion of three AIDS or AIDS-relevant applicable cases. And third, the equal protection clause of the Constitution is discussed. Other legal theories that seem useful but have not yet developed into reported court cases include the U.S. consitituional rights of privacy and reputation, federal statutes, individual state constitutions/statutes, and common law tort. (24 references) (KM)

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A Legal Memorandum

SEPTEMBER 1989 *National Association of Secondary School Principals* ISSN 0192-6152

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Students with AIDS

One of the most threatening diseases to strike our society in recent years is Acquired Immune Deficiency Syndrome (AIDS), apparently caused by a virus (HIV). So far, the disease has hit adult male homosexuals and intravenous drug abusers hardest; however, some secondary and even elementary students have contracted the disease, often through blood transfusions. These young people coming to school can raise serious problems for administrators. Because of the almost invariably fatal course of the disease, parents are understandably concerned about any possible exposure of their children to it, but youngsters with AIDS also have a right to an education. Administrators, therefore, must act very carefully when confronted with a student who may be infected with the HIV virus.

In addition to the public relations and political problems associated with students with AIDS, administrators are also faced with the legal implications of their decisions; and their actions, if uninformed, can result in monetary liability for their school systems or even for themselves. This *Legal Memorandum* will address the law as it pertains to AIDS in public elementary and secondary schools. No effort will be made to deal in any detail with medical explanations of AIDS or with methods of dealing with it as a communicable disease. Other sources should be consulted for such materials and advice.*

Certain definitions should be held in mind in discussing this subject. In describing AIDS, medical researchers have identified three stages of the disease to which reference will be made:

1. "Full-blown" AIDS. When a person contracts one or more "opportunistic infections" and displays characteristic symptoms.
2. AIDS-related complex (ARC). When a person shows some symptoms of an impaired immune system, but none of the more usual signs of the full-blown disease are readily observable.
3. Carrier (seropositive). When a person tests positively for the HIV virus, but shows no symptoms.

* For example, the National Association of State Boards of Education has just published *Someone at School Has AIDS: A Guide to Developing Policies for Students and School Staff Who Are Infected with HIV*. For cost and purchase information, contact NASBE, 1012 Cameron St., Alexandria, Va. 22314. Telephone (703) 684-4000.

Legal Theories

Congress passed the Rehabilitation Act of 1973 to provide protection for handicapped individuals.[1] Section 504 of the Act has been used successfully in the majority of the AIDS cases that will be discussed.

Other legal theories have been used to argue for the admission of students with AIDS. The Education for All Handicapped Children Act of 1975 (P.L. 94-142)[2] and the equal protection clause of the Fourteenth Amendment of the Constitution are two additional grounds on which legal arguments have been based.

Because of the almost invariably fatal course of the disease, parents are understandably concerned about any possible exposure of their children to it, but youngsters with AIDS also have a right to an education.

Section 504 and P.L. 94-142 were intended to protect the rights of the handicapped in differing situations, and are enforced by different federal agencies. Both Section 504 and P.L. 94-142 protect individuals with physical, emotional, and/or intellectual handicaps, but Section 504 goes beyond these handicaps to embrace those individuals with addictions to alcohol or drugs. While P.L. 94-142 protects handicapped students aged 3 to 21, Section 504 extends their civil rights protection beyond the school years and into the work environment.

Students who qualify as handicapped under P.L. 94-

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142 initially must undergo a formal evaluation before they may be identified and labeled as students with specific exceptionalities. Section 504 does not require that the person in question be evaluated formally before receiving the handicapped designation. The person need only be perceived as having a handicap in order to be protected. Thus far, cases concerning students with AIDS arising under either of the two federal statutes have involved elementary rather than secondary school students, but there is no reason to think that the law would be interpreted differently in the case of older students.

The Language of Section 504

The Rehabilitation Act of 1973 specified in Section 504 and in the related regulations[3] that "[n]o otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ."

The Act further defined a handicapped person as "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

Handicapped is further divided into two categories. A physical impairment is: "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular, reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine."

In addition, major life activities are defined as: "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

The phrase "otherwise qualified" refers to the individual "who is able to meet all of a program's requirements in spite of this handicap."[4]

The law goes one step further, requiring the employer, or educational agency in these cases, to make any "reasonable accommodation" necessary that would allow the person to perform the assigned tasks, thus making the person otherwise qualified within the definition of the law. The Supreme Court has defined a reasonable accommodation as one that does not impose "undue financial and administrative burdens" or does not require "a fundamental alteration in the nature of [the] program."

The Supreme Court, in *School Board of Nassau County* v. *Arline*,[5] described the legal analysis to be undertaken in regard to handicapped persons thusly:

1. Is the person handicapped?
2. If the person is handicapped, is he otherwise qualified?
3. If he is not otherwise qualified, can he become so with reasonable accommodations?

The Court went on to identify four factors for deciding whether a contagious person with a contagious disease is such a substantial risk to others as to be not otherwise qualified:

1. The nature of the risk (how the disease is transmitted)
2. The duration of the risk (how long the carrier is infectious)
3. The severity of the risk (what is the potential harm to third parties)
4. The probability the disease will be transmitted and will cause varying degrees of harm.

What, then, does Section 504 require a school district do to provide a nondiscriminatory education for students with AIDS or AIDS-related complex (ARC)? While the Supreme Court has not addressed this question as yet, some lower court opinions suggest an answer.

AIDS Cases Under Section 504

A comparison of two cases concerning students with communicable diseases, one that of a 31-year-old man and a carrier of Hepatitis B, the other a student with AIDS, highlights the differences in decisions that can occur owing to the particulars of the cases. In each case, Section 504 was used as the primary basis for arguing that the students should be admitted to federally financed educational programs.

In *Martinez* v. *School Board of Hillsborough County, Florida*,[6] a six-year-old mentally retarded student with ARC and a level of manifestation of signs that suggested an acceleration of the disease, was refused admission to a regular trainable mentally handicapped (TMH) classroom. A review team recommended homebound instruction, but this was unacceptable to her mother.

Eliana Martinez posed additional problems when it was determined that along with her other disabilities, she was incontinent, drooled continually, sucked her thumb and/or finger, and suffered from a disease (thrush) which produced blood in the saliva.

The district judge acknowledged that the Martinez child had been "dealt a hand not to be envied by anyone." Although empathic with the situation, the judge

argued she must weigh the interest of protecting public health against providing an education for Eliana Martinez.

Prior to the beginning of the 1988-89 school year, Judge Elizabeth A. Kovachevich of the Middle District of Florida ruled that Eliana Martinez would be admitted to a TMH classroom. However, her admission would be based on the following:

> Eliana will be taught in a separate room to be constructed in the [TMH] classroom with a large glass window and sound system to allow Eliana to see and hear the students in the main classroom. A full-time aide will remain in the room with Eliana and attempt to toilet train her and teach her not to mouth her fingers. Another child can enter the room only if a waiver is obtained from the child's parents absolving the school board from liability. Eliana can be taught in the main classroom when she becomes toilet trained and no longer places her fingers in her mouth. At that time, a full-time aide will ensure that an appropriate distance between Eliana and other children is maintained. The school nurse will be available for consultation if questions arise as to the advisability of Eliana being in the classroom on a certain day.

Rosa Martinez, Eliana's mother, stated that she was willing to comply with the conditions, but if Eliana was not able or willing to remain in the cubicle, she would consider appealing the decision.

The court found for the school district in this case and determined that the accommodations offered the plaintiff were reasonable. The school district had offered the Martinez child placement in the homebound program; the court agreed that this placement was the most appropriate for Eliana's educational needs and the one that would protect the public safety. The court found that the safety of the public was in greater jeopardy because of the physical, rather that the mental, limitations of the child.

On August 22, 1988, Mrs. Martinez did appeal. In the meantime, on August 24, 1988, Judge William Hodges, also of the Middle District of Florida, ruled that, for the present time, Eliana would return to the homebound program rather than attend a regular TMH program or attend school from within a glass cubicle. Thus the 1988-89 school year began.

The federal Court of Appeals for the Eleventh Circuit, on December 1, 1988, vacated Judge Kovachevich's decision and remanded the case for further findings of fact.[7]

The judges outlined the questions to be answered when a child with an infectious disease seeks relief under both P.L. 94-142 and Section 504:

1. Under the requirements of P.L. 94-142, what is the most appropriate educational placement?
2. Within the meaning of Section 504, is the child otherwise qualified to be educated in that placement? A child with an infectious disease is otherwise qualified unless meaningful evidence that her presence poses a "significant" risk of transmission to others is offered.
3. If the child does pose a "significant" risk to others, can reasonable accommodations be made to reduce the risk so as to make her otherwise qualified?

The appellate court noted that the parties agreed that without AIDS, there would be no argument about the TMH classroom being most appropriate, and directed the trial judge to take more detailed evidence on question two above. While the judge had heard some evidence about the risks of transmission related to some bodily fluids, she had not considered in detail the blood in Eliana's saliva.

Further, the court provided guidance in answering question three above. Each accommodation must be considered in terms of effects on the child and the institution. Is the placement in the least restrictive environment? What will be the psychological and educational effects on the child? What is the financial burden on the institution?

In early 1989, Judge Kovachevich took additional evidence as directed. She found that the American Academy of Pediatrics had "eliminated the recommendation that children who cannot control their bodily secretions should be placed in a more restricted environment." The Center for Disease Control had taken a similar position in a June 24, 1988, update.

One of Eliana's physicians now stated "the risk is so low statistically that he doesn't feel the risk warrants [segregation]." Finally, the problems with bodily fluids (thumbsucking, incontinence, and thrush) had subsided.

The medical evidence consistently said "the possibility of transmission with respect to tears, saliva, and urine is remote and theoretical." Combining that evidence with the evidence about Eliana led the judge to conclude the possibility of transmission to others did not rise to the "significant risk" level. Thus, Eliana Martinez was "otherwise qualified" and the school board was ordered to

GUIDELINES FOR PRINCIPALS

1. Encourage your school system to develop a legally-sound policy and administrative regulations for dealing with *all* contagious diseases.
2. Deal with AIDS and ARC as you would with other contagious diseases, taking into account the degree to which the disease is likely to be spread in the school environment.
3. Consonant with the "need to know" by school staff, take all steps possible to protect the privacy of students infected with the HIV virus.
4. Realize that evidence of "bad faith" and "foot dragging" in recognizing the legal rights of students with AIDS can be costly to the system and to you.[10]

admit her on April 26, 1989.[8]

The only reported example of a plaintiff with AIDS losing his suit under Section 504 is *Kohl* v. *Woodhaven Learning Center*.[9] A 31-year-old mentally retarded blind man, who exhibited behavior problems that included scratching, biting, open masturbation, and self-abuse sued for admission to a life-skills and vocational instructional center. In addition to these mental and physical handicaps, the plaintiff was an acknowledged active carrier of Hepatitis B.[11]

Dennis Kohl claimed that he met the criteria outlined in Section 504 to be considered handicapped and that he was otherwise qualified for admission to the vocational program. Owing to his aggressive behaviors and/or his condition as an active carrier of Hepatitis B, Woodhaven stated the accommodations that would be necessary were unreasonable. The accommodation was that staff members who would have direct contact with Kohl would have to be inoculated against Hepatitis B. The center claimed that the cost was prohibitive, considering the ever-present possibility of having to help him, and their high (70 percent) turnover rate yearly.

The federal district judge determined that Kohl was indeed an otherwise qualified handicapped individual under Section 504 and was entitled to admission to the vocational program. Further, the judge found that the accommodation required for his entry was reasonable in light of the center's budget of four million dollars; the cost for inoculation of the affected employees was $8,000-10,000 initially and $5,000 for each future year, considering employee turnover.

The judge also said that, "the only reason for refusing plaintiff . . . was his Hepatitis B and the costs involved in inoculating contact staff," and not his behavior problems, as the center alleged.

Woodhaven appealed the ruling and was partially successful.[12] A majority of the appellate panel believed the district judge had misapplied the law in two ways. Specifically, the judge had analyzed the risk to others only *after* the accommodations he required were in place. Further, he gave too much deference to the opinion of one public health official.

These judges saw application of the four factors from *Arline* as leading to the conclusion Kohl was not otherwise qualified. The district judge's plan would not eliminate all significant risk of transmission to other clients or to staff members. The case was remanded to gather evidence on the availability of reasonable accommodations which would not cause an undue administrative or financial burden or cause a fundamental alteration in the program.

Since *Woodhaven* is the only reported case where a plaintiff with a contagious disease has not prevailed (though Kohl still might prevail on remand), and since it does not involve P.L. 94-142 and a K-12 student, its value in guiding student officials is probably quite limited. In addition, Hepatitis B is more easily transmitted than is AIDS.

The cases that follow are further examples of successful suits by students with AIDS based on Section 504.

In *Ray* v. *School District of DeSoto County*, the judge ruled that three brothers, all hemophiliacs and carriers of the AIDS virus, were entitled to access to a regular classroom setting.[13] The judge ordered the school district to enroll the brothers in a regular classroom setting "[u]nless and until it could be established these children posed a real and valid threat to the school population of DeSoto County."

The school district had offered the family homebound instruction. Although the specific issue was not addressed directly, the court determined that this alternative was a violation of Section 504 because these brothers were otherwise qualified for regular classroom placement.

The issue of whether a child infected with AIDS was otherwise qualified within the meaning of Section 504 to

attend a regular kindergarten class was addressed in *Thomas* v. *Atascadero Unified School District*.[14] Ryan Thomas, an AIDS victim, had been admitted to a regular kindergarten class and attended without incident for three days. On the fourth day, he became involved in an altercation with another student that ended when Ryan bit the other child on the leg. Although the child's skin was not broken, Ryan was removed from the classroom and sent to a psychologist for evaluation; the other child was not required to undergo psychological evaluation or counseling.

As a source of litigation, the AIDS crisis has barely raised its ugly head.

The court was clear in its conclusion that Ryan was a handicapped individual within the meaning of Section 504, and that he was otherwise qualified to attend the regular kindergarten class. The court used the psychologist's finding to determine that Ryan might indeed be prone to aggressive behavior because of his inferior level of language and social development. The doctor did not, however, predict that the biting behavior would occur again. The court weighed the rights and needs of the handicapped child against the safety of the other students and reached the conclusion that the rights of the handicapped child prevailed.[15]

The New York City Board of Education promulgated a policy that children with AIDS could not be automatically excluded from regular school attendance. No changes in placement could be made unless recommended by the committee after a case-by-case review to determine whether the circumstances would pose increased threat to others or require special precautions. This policy was challenged in a state court, *District 27 Community School* v. *Board of Education*.[16]

The New York court upheld a challenge to the policy and based its decision, in part, on Section 504. The court agreed with the city board of education that no rational basis existed for automatically excluding all students with AIDS and that each student was entitled to a review to determine whether the student was otherwise qualified to attend school in a regular setting.

The Language of P. L. 94-142

Congress passed the Education for All Handicapped Children Act of 1975 (P.L. 94-142) to ensure that those handicapped individuals between the ages of 3 and 21 would be provided a free and appropriate public education in the least restrictive environment. This Act was passed in order to assure handicapped citizens that local education agencies would provide access to an education appropriate to the needs and abilities of the handicapped and, to that end, imposed certain procedural requirements upon federally funded educational institutions that go beyond those of Section 504.

Within P.L. 94-142, special education is defined to mean "specially designed instruction at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions."

The Act further requires that an Individualized Education Plan (IEP) be provided each student. This IEP must include the least restrictive environment (LRE) wherein the handicapped student's education can most effectively take place. The Act strongly encourages the concept of mainstreaming, wherein the student is placed in a regular program for as much time as possible.

AIDS Cases Under P. L. 94-142

In *Parents of Child, Code No. 870901W* v. *Coker*,[17] the plaintiff brought action against the Wagoner Public Schools, asking that the student be admitted to the school's class for emotionally disturbed students. In addition to the diagnosed emotional problems, the student had tested positive for the HIV virus.

The court found that under P.L. 94-142, the student could not be refused admission to the special education classroom. The court further specified that the student was handicapped under the definitions of P.L. 94-142, primarily because of the emotional disability, and that the emotional disability classroom was the least restrictive environment.

Because the primary exceptionality acknowledged for this child was his emotional handicap, the court did not address the issue of whether the AIDS condition alone constituted a handicap sufficient to prohibit a change of placement under the Act. The court recognized that because the emotional handicap superseded the virus, the student qualified for procedural protection under P.L. 94-142.[18]

Another case in which the the plaintiff successfully relied on P.L. 94-142, *Community High School District* v. *Denz*,[19] did not involve AIDS or ARC, but seems relevant.

A mentally handicapped child with Down's syndrome was also a Hepatitis B carrier. The state superintendent of education affirmed an order of the independent hearing officer that the student must be mainstreamed into a special education center and that this center was the least

restrictive environment for her educational needs. Again, the court looked at the primary exceptionality, mental retardation, to determine the most appropriate placement. The court found that the chance of transmission of Hepatitis was minimal in light of the personnel at the center and the student's history of behavior.

In the majority of cases that go before the courts based on P.L. 94-142, the law requires that all procedural remedies be exhausted prior to a judicial hearing. In *Doe* v. *Belleville Public School District No. 118*,[20] however, the court recognized that due to the inevitable consequences of AIDS, the procedural sequence specified in P.L. 94-142 can be circumvented.

The court appears to have recognized that, for children with AIDS, time is their most valuable commodity, and that it is the responsibility of society to see that the time left to them be used to make their lives as normal and comfortable as possible.

The Equal Protection Clause of the Constitution

The equal protection clause offers another legal theory upon which a claim can be based by students with AIDS. This argument was invoked in *District 27 Community School Board* v. *Board of Education*, referred to earlier.[21] An unusual aspect of this case was the fact that the original plaintiffs were two local community school boards in New York City—rather than an aggrieved student—suing the central board.

The central board had announced a policy that forbade the automatic exclusion of students with AIDS from the New York City schools. Thereafter, according to the policy, a decision was made to allow a seven-year-old student with AIDS to continue in school.

The local boards sought an injunction to force disclosure of a child's name and school, as well as to prevent attendance. The student was then allowed to become an intervenor in the suit.

The trial court judge found numerous legal theories to disallow the claims of the local community boards; included was a determination that such automatic exclusion would violate the equal protection clause. In the last 15 years, a standard analytical format has developed for cases involving this issue; if a "fundamental right" or "suspect class" is found, government must have a compelling reason for the discriminatory treatment and have no lesser alternative way to deal with the problem. This is the "upper tier" test. If neither a fundamental right nor a suspect class is found, government must have only a "rational basis" for what it is doing, the "lower tier" test.

Finding no fundamental right or suspect class, the judge applied the lower tier test. He noted that plaintiffs called for exclusion only of students with AIDS, not ARC patients or carriers, but students in each group were equally likely to transmit AIDS. The court therefore found the local board's ruling to be in violation of the equal protection clause, even under the lower standard.

Although this application of the typical equal protection analysis was successful for the student, it is not the obvious way to argue. A more logical approach would be to determine whether any rational basis exists for refusing to admit any category of AIDS patient. Numerous judges, including the judge in *District 27*, have heard medical experts agree unanimously that AIDS " . . . is not transmitted by casual interpersonal contact or airborne spread. . . ." In the face of such expert testimony, it is unlikely that any rational basis would be found to support a decision to exclude the typical student with AIDS.

Other Legal Theories

The legal theories discussed above have provided consistently successful results for student plaintiffs with AIDS or ARC. Several other theories seem useful, although they have not yet developed in reported cases.

U.S. Constitution

The Supreme Court has recognized that students in schools have federal constitutional rights to *privacy* and *reputation*. These rights arise in questions of disclosing the identities of students with AIDS. Officials likely will need compelling reasons to justify any disclosures, especially any disclosures beyond those few people who need to know.

The due process clauses of the Fifth and Fourteenth Amendments require that proper notice and hearing be given before a *property right in attendance*, or liberty rights in privacy and reputation, are deprived. In the haste and emotion involved in dealing with AIDS, *procedural due process* rights may be ignored. Similarly, the likelihood of an arbitrary and capricious decision to remove or segregate the student may deprive the student of *substantive due process*. Given the unanimity of medical testimony, any adverse action would seem to be a readily apparent substantive due process violation.

Federal Statutes

The Family Educational Rights and Privacy Act (FERPA) requires that student records be kept confidential, apart from the exceptions in the law and

regulations.[22] One exception allows disclosure without consent in a medical emergency. However, no such emergency would appear to exist in normal circumstances since, as repeatedly stated, no risk of casual transmission exists.

State Constitutions/Statutes

States may have their own *constitutional provisions* on privacy, equal protection, and due process. In addition, states may have their own *statutory versions* of Section 504, P.L. 94-142, and the Family Educational Rights and Privacy Act. The language of these provisions and their interpretations by state courts may give students greater protection than do their federal counterparts. Finally, states may have *suspension and expulsion statutes* relevant to any exclusions as well as *communicable disease statutes* relevant to disclosure.

Common Law Tort

At least three tort theories are potentially available. *Defamation* may arise with the libel or slander involved with writing or saying untruths about a student. *Invasion of privacy* from telling true but embarrassing private facts is arguable. The tort of *intentional infliction of emotional distress* is recognized in some states. The student who has AIDS and is forced to face a public controversy at school obviously faces severe trauma.

Conclusion

As a source of litigation, the AIDS crisis has barely raised its ugly head. In the typical student situation, however, the courts have been unanimous: The student must be admitted and treated as a student without AIDS would be treated.[23] Although Section 504 has proven to be a particularly successful basis for student claims, attorneys will continue to identify other legal theories to protect their clients' interests.

Speaking in the *District 27* case, Judge Hyman summed up the future for courts as the major battlefield to resolve questions about AIDS: "[T]his singular court proceeding became the immediate focus of intense public interest and media attention, involving as it did highly emotional and controversial question of civil rights, confidentiality, government, and school-aged children touched by one of the most publicized legal infectious killers known to modern medicine."[24] With such elements, the controversy will not end soon!

Endnotes

1. 29 U.S.C. Secs. 701-796 (1982).

2. 20 U.S.C. Secs. 1401-1461 (1975 ed. & Supp. III 1979).

3. 45 C.F.R. Sec. 84 (1985).

4. Southeastern Community College v. Davis, 442 U.S. 397 (1979).

5. 480 U.S. 273 (1987).

6. 675 F. Supp. 1574 [44 Ed. Law Rep. 175] (M.D. Fla. 1987).

7. 861 F.2d 1502 [50 Ed. Law Rep. 359] (11th Cir. 1988).

8. 711 F. Supp. 1066 (M.D. Fla. 1989).

9. 672 F. Supp. 342 [42 Ed. Law Rep. 1125] (W.D. Mo. 1987).

10. In Phipps v. Saddleback Valley Unifed S.D. 251 Cal. Rptr. 720 (Cal. App. 4 Dist. 1988) the appellate court not only affirmed the lower court's decision ordering the plaintiff student's admission to school, but also the award of $10,000 in payment of attorney fees the student incurred.

11. As early as 1979, courts required the inclusion of handicapped students who were also Hepatitis B carriers. See N.Y. State A.R.C. v. Carey, 612 F.2d 644 (2d Cir. 1979).

12. 865 F.2d 930 [51 Ed. Law Rep. 383] (8th Cir. 1989).

13. 666 F. Supp. 1524 [4 Ed. Law Rep. 632] (M.D. Fla. 1987).

14. 662 F. Supp. 376 [40 Ed. Law Rep. 732] (C.D. Cal. 1986).

15. Similar results have come in other cases: Robertson v. Granite City Community Unit S.D. No. 9, 684 F. Supp. 1002 (S.D. Ill. 1988); Doe v. Dolton Elementary S.D. No. 148, 694F. Supp. 440 (N.D. Ill. 1988); and Doe v. Belleville Public S.D. No. 118, 672 F. Supp. 342 (S.D. Ill. 1987).

16. 502 N.Y.S.2d 325 [32 Ed. Law Rep. 740] (Sup. Ct.

1986).

17. 676 F. Supp. 1072 [44 Ed. Law Rep. 231] (E.D. Okl. 1987).

18. See White v. Western School Corp., IP 85-1192C (S. D.Ind. Aug. 23, 1985).

19. 463 N.E.2d 998 [17 Ed. Law Rep. 885] (Ill. App. 1984).

20. *Supra*, note 14.

21. *Supra*, note 15.

22. 20 U.S.C. Sec. 232 (g) (1984) and 34 C.F.R. Sec. 99 (1987).

23. The one reported case of a teacher with AIDS came to a similar result. See Chalk v. U.S. Dist. Court, 840 F.2d 701 [45 Ed. Law Rep. 58] (9th Cir. 1988). This was an employment case focusing on a teacher of the hearing impaired with "full-blown" AIDS. The court declared that Victor Chalk was handicapped and otherwise qualified to teach. He was permitted to return to the classroom.

24. *Supra*, Note 15

This *Legal Memorandum* was written by John L. Strope, Jr., professor of educational leadership, University of South Alabama, Mobile, and Cathy Allen Broadwell, resource teacher, Mobile County Public School System. It is a revised version of an article entitled "Students with AIDS," found at 49 Ed. Law 1105 (Jan. 5, 1989) (used by permission of West Publishing Co.).

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